

BRADLEY/GROMBACHER LLP
CLASS ACTIONS, MASS TORTS & CATASTROPHIC INJURIES

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January 10, 2022

VIA EMAIL & U.S Mail

Via ECF
Hon. William H. Alsup
San Francisco Federal Courthouse
Courtroom 12, 9th Floor
San Francisco, CA 94102

To the Honorable Judge Alsup:

**Re: *Flores-Mendez, et al. v. Zoosk, Inc., et al.* Case No. 3:20-cv-04929-WHA
Plaintiffs' Response to Defendant Zoosk's Request for Discovery Relief**

Plaintiffs Juan Flores-Mendez ("Plaintiff Mendez") and Amber Collins ("Plaintiff Collins")(collectively "Plaintiffs") respectfully submit the following in response to the January 7, 2022, correspondence requesting discovery relief, filed by defendant, Zoosk, Inc. ("Zoosk").

Response to Requests for Documents

Zoosk seeks an order compelling Plaintiffs to complete their production of documents responsive to Defendant's June 21, 2021 Requests for Production (the "RFPs"). Plaintiffs have made a supplemental production as of today's date which includes: (1) the Notice of Breach that Plaintiff Flores-Mendez received from Zoosk; and (2) Plaintiff Mendez's PayPal Statement dated June 9, 2019. Plaintiffs do not believe they have additional responsive documents, however, should they discover any such documents they will promptly supplement.

Interrogatory No. 13

Zoosk also seeks an order compelling Plaintiffs to supplement their response to Interrogatory 13, which requests that each Plaintiff to "[p]rovide a computation of each category of damages claimed by you in the Action and state the basis for each such computation."

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Simply, damage calculations, valuation of PII, and other financial inquiries call for expert opinion, a stage that this case has yet to reach. As such, Zoosk's Interrogatory is premature and Plaintiffs will fully explicate their contentions and theories on damages and any PII valuation at the proper time and with the proper vehicle—a series of expert reports, and will produce any and all materials on which its expert(s) will rely pursuant to Fed. R. Civ. P. 26(a)(2)(B)(iii).

Moreover, given that Plaintiffs lack any specified knowledge or training in the damage valuation and/or valuation of PII any computation of damages is, at least, protected attorney work-product.

Defendant contends that Plaintiffs' Initial Disclosures failed to provide required damage disclosures thus necessitating the interrogatory. Plaintiffs' Amended Initial Disclosures, which were served in February of last year, however, clearly included a calculation. Such disclosures provided, in pertinent part, the following calculation "subject to further investigation, discovery, and expert analysis":

All Plaintiffs and Class Members are entitled to compensation for the money and time that Plaintiffs and Class Members have spent addressing issues related to the Data Breach, including, but not limited to, the time, loss of productivity, and costs associated with the detection and prevention of identity theft and unauthorized use of their Personal Information, and the stress, nuisance, inconvenience, and annoyance of dealing with issues resulting from the Data Breach.

These damages are ongoing, as the threat of continuing and future acts of fraud by persons who acquired their Personal Information as a result of the Data Breach has not abated, and Plaintiffs and Class Members must continue to spend time and money addressing issues related to the Data Breach. Further discovery, investigation, and expert analysis are needed to calculate these damages.

Immediately following the breach, to the best of his recollection, Plaintiff Flores-Mendez spent approximately 78 hours associated with the prevention and detection of the unauthorized use of his PII, reviewing and deleting phishing emails, cancelling credit cards believed to be associated with the compromised Zoosk account, and communicating with his attorneys prior to initiating this litigation. Since then, to the best of his recollection, Plaintiff Flores-Mendez has spent approximately 6 to 12 hours per week associated with the prevention and detection of the unauthorized use of his PII, reviewing and deleting phishing emails, cancelling credit cards believed to be associated with the compromised Zoosk account, and communicating with his attorneys prior to initiating this litigation. The

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aggregate amount of this time could have been spent on the enjoyment of life with family and friends, or toward Plaintiff Flores-Mendez's occupation, but was instead directed to these activities due to Defendants' failure to prevent or detect the Data Breach. Plaintiff Flores-Mendez values his time and estimates its value at \$15 per hour, for a total of approximately \$1,458 damages for time spent thus far. Additionally, Plaintiff Flores-Mendez paid two membership fees, once at \$56.21 for a 6-month subscription, then \$74.94 for renewal.

At present, Plaintiff Collins is calculating the time she has spent on tasks associated with the prevention and detection of the unauthorized use of her PII, reviewing and deleting phishing emails, cancelling credit cards believed to be associated with the compromised Zoosk account, and communicating with her attorneys prior to initiating this litigation. To the best of her recollection, Plaintiff Collins has spent approximately 20 hours associated with the prevention and detection of the unauthorized use of her PII, reviewing and deleting phishing emails, cancelling credit cards believed to be associated with the compromised Zoosk account, and communicating with her attorneys prior to initiating this litigation. The aggregate amount of this time could have been spent on the enjoyment of life with family and friends, or toward Plaintiff Collins' occupation, but was instead directed to these activities due to Defendants' failure to prevent or detect the Data Breach. Plaintiff Collins values her time and estimates its value at \$15.00 per hour, for a total of \$300.00 damages for time spent.

Additionally, for both Plaintiffs there are damages associated with the loss of value of PII.

The Amended Initial Disclosures included the following damage valuation:

A market exists for stolen PII because malicious actors are able to monetize that information by gaining access to both metadata attached to the PII and by harvesting valuable information from the users' accounts themselves. An individual's entire portfolio of PII has been valued as high as \$1,200 per person

However, Spark Networks' acquisition of Zoosk indicate that Spark Networks, at a minimum, put a value of approximately \$8.60 per user (acquisition in 2019 for \$258 million, with approximately 30 million users).

Subject to Plaintiffs' objections, Plaintiffs are willing to amend their response to include these calculations subject to amendment as necessary.

Apologies to Counsel and the Court

Plaintiffs' counsel apologizes to the counsel for Zoosk and the Court for the necessity of this hearing. Counsel had intended to supplement the responses prior to the seventh of January,

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however, counsel Kiley Grombacher, primarily responsible for the responses, contracted COVID as did her family resulting in complications for her infant son.

Dated: January 10, 2022

Respectfully submitted,

**BRADLEY/GROMBACHER LLP
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